

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:UNY:TL-N-6590-99
RMBoulanger

date:

to: John A. Piucci, CEP Team Member, Group [REDACTED]

from: District Counsel, Buffalo

subject: [REDACTED] / Preparation of Form 872-F

DISCLOSURE STATEMENT

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ISSUE

This memorandum is in response to your November 2, 1999 memorandum concerning the proper method for completing the statute extension discussed in our October 28, 1999 memorandum submitted to you. We were informed by Cherish D. VanMullen of

A copy of this opinion is being sent to the National Office for Post-review and any guidance they may deem appropriate. We will inform you of any modification or suggestions, and if necessary we will send you a supplemental memorandum incorporating any such recommendation.

the National Office on Friday, November 19, 1999, that although this is in fact merely a follow-up to your original September 13, 1999 request, the National Office will treat this as a new NSAR. As we telephonically discussed this is necessary in the unlikely event that the request is converted to an FSA. The ninety (90) day due date would be calculated using the new NSAR date rather than the old one.

Because this request is considered a separate request, a summary of the original facts set forth in your September 13, 1999 memorandum and the legal conclusions reached are set forth below. The additional facts set forth in your November 2, 1999 memorandum are subsequently set forth.

FACTS

You originally received an examination report generated from an examination of the [REDACTED] ([REDACTED]) partnership. Your taxpayer, [REDACTED], holds a [REDACTED]% interest in this partnership for [REDACTED]. You also have previously extended the statute for [REDACTED] as the result of an Administrative Adjustment Request (AAR) submitted by [REDACTED] for a similar issue. In order to protect that statute, our office approved supplemental language which we inserted into the Form 872 secured for that year.

The [REDACTED] TEFRA adjustment is the result of an examination and thus the statute is different from the statute addressed in your previous submission to this office regarding the [REDACTED] year. The [REDACTED] statute is open under both I.R.C. §§ 6229 and 6501.

You requested our opinion as to whether the [REDACTED] statute of limitations should be extended using Form 872-F or if supplemental language could be inserted into the Form 872 used to protect the [REDACTED] statute under I.R.C. § 6501. You have already extended the statute for the [REDACTED] - 1120 to [REDACTED]. Since the one year date is due to expire on [REDACTED], a prompt response was requested.

In our October 28, 1999 memorandum, it was our position that I.R.C. § 6229(f) applies to this case because the partnership involved was not only excepted out of the TEFRA provisions by the occurrence of a I.R.C. § 6231(b) event, but also the statute expires on [REDACTED].

We informed you that we had also informally discussed this issue with Don Glover, TEFRA Coordinator, QMS, Upstate New York District. Based upon our discussions, it was agreed that given the fact that the I.R.C. § 6229 limitation is still open, the procedures thereunder should be utilized.

Thus, it was our opinion that the [REDACTED] statute of limitations under I.R.C. § 6229(f) should be extended using Form 872-F. In employing Form 872-F, we informed you that it was paramount to remain alert to the fact that such form only extends adjustments pertaining to the partnership; it has no benefits as to other tax matters appearing on the parent corporation's Form 1120.

Subsequent to your initial September 13, 1999 request, but prior to completion of National Office post review, you submitted a "follow-up" memorandum dated November 2, 1999. That memorandum raised an additional issue regarding the "proper method" of completing the statute extension discussed in our October 28, 1999 memorandum.

On November 19, 1999, this office, through E-Mail, received the National Office's response as to which form, Form 872-F or Form 872, should be used to extend the period for assessment for the [REDACTED] tax year. Although you have been forwarded a copy of the National Office position, their response, in pertinent part, is as follows:

The results of the examination of [REDACTED] were agreed to by the TMP of [REDACTED] by signing a Form 870-P on [REDACTED]. This agreement has the effect of binding the partners of the [REDACTED] partnership. See § 6224(c)(1). The agreement between [REDACTED] and the Service also had the effect of converting the partnership items into nonpartnership items pursuant to § 6231(b)(1)(C). Thus, the applicable period to assess any deficiencies for these items is found in § 6229(f).

Pursuant to § 6229(f), the Service and the partner, whose items have been converted to nonpartnership items, may agree to extend the period to assess the items that have been converted to nonpartnership items. The parties have agreed to extend the period to assess the deficiency attributable to partnership items that have been converted to nonpartnership items for tax year [REDACTED] and have asked what is the proper form on which to memorialize their agreement. . .

We have reviewed the memorandum regarding the above named taxpayer and have no objection to the conclusions reached therein.

In regard to whether a Form 872 or a Form 872-F should be signed, a Form 872-F is the proper Form, however, it is also appropriate to use Form 872 as modified in Exhibit 3 attached to your memorandum.

We also note that we are not expressing an opinion as to who would be the appropriate person to sign the Form 872 or Form 872-F. We are under the belief that this is a matter which will be the subject of a memorandum which is being separately submitted to the National Office.

Based upon the above, you may utilize the Form 872 as modified, as you had originally desired. Therefore, the sole issue remaining is who is the appropriate person to sign the statute extension.

ANALYSIS

Treas. Regs. § 1.1502-77(a) requires the common parent of a consolidated group to be the sole agent for each subsidiary in the group in all situations other than the making of the consent required by § 1.1502-75(a)(1), the making of an election under section 936(e), the making of an election to be treated as a DISC under § 1.992-2, and a change of the annual accounting period pursuant to § 1.991-1(B)(3)(iii).

Furthermore, § 1.1502-77(a) requires the parent to file for all extensions of time, including extensions of time for payment of tax under section 6164. Thus, the consolidated regulations would appear to require [REDACTED], the common parent of the group, to execute the Forms 872 consent to extend the statute of limitations.

In the situation presented, it appears that a corporate officer of [REDACTED], as the common parent, is the proper party to execute the modified Form 872.

If you have any questions regarding the above, please contact Raymond Boulanger of this office at 551-5610.

EDWARD D. FICKES
Acting District Counsel